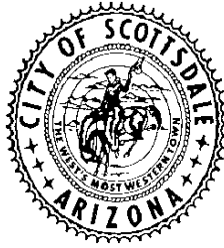


APPROVED MARCH 25, 2003



**MINUTES
SCOTTSDALE PLANNING COMMISSION
KIVA – CITY HALL
3939 N. DRINKWATER BOULEVARD
FEBRUARY 26, 2003**

PRESENT: David Gulino, Chairman
Charles Lotzar, Vice Chairman
James Heitel, Commissioner
Kay Henry, Commissioner
Tony Nelssen, Commissioner
Kevin Osterman, Commissioner
Steve Steinberg, Commissioner

STAFF: Pat Boomsma
Pete Deeley
Randy Grant
Don Meserve
Jerry Stabley
Al Ward
Kira Wauwie

CALL TO ORDER

The regular meeting of the Scottsdale Planning Commission was called to order by Chairman Gulino at 5:05 p.m.

ROLL CALL

A formal roll call confirmed members present as stated above.

MINUTES APPROVAL

1. January 28, 2003

VICE CHAIRMAN LOTZAR MADE A MOTION TO APPROVE THE JANUARY 28, 2003 MINUTES AS PRESENTED. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

APPROVED

OPENING STATEMENT

COMMISSIONER OSTERMAN read the opening statement which describes the role of the Planning Commission and the procedures used in conducting this meeting.

CHAIRMAN GULINO stated case 11-AB-2002 has been moved from the expedited agenda to the regular agenda. He further stated Mr. Deeley has additional information on that case and will hand it out to the Commission.

EXPEDITED AGENDA

1-UP-2003 (Pure Fitness Use Permit) request by Mittlesteadt & Cooper Associates Ltd, applicant, Shea East LLC, owner for a conditional use permit for a health studio in a 25,000 +/-sq ft tenant space of a building located at 7330 E Shea Blvd, Suites 101 & 102 with Central Business District (C-2) zoning.

MS. WAUWIE presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER HENRY inquired if the fitness center was in that space before. Ms. Wauwie replied in the negative. Commissioner Henry inquired if it is proposed they put the fitness center in that space. Ms. Wauwie replied in the affirmative. Commissioner Henry inquired if they had a special permit to occupy part of this space to do pre-registration and have their equipment there for people to try out. Ms. Wauwie stated they would have needed a conditional use permit for their operations as a health club. Commissioner Henry stated they are doing that now before the Commission has even voted on this. She inquired why are they being allowed to do that. Ms. Wauwie stated that maybe they just moved in prematurely. Commissioner Henry inquired if that was legal.

COMMISSIONER STEINBERG asked what was the prior use in this space.

KAREN BETENCOURT, Mittlesteadt & Cooper Associates Ltd, applicant, stated to answer Commissioner Henry's question they are using an adjacent suite that was provided to them by the landlord as a sales office and is not part of the use permit. She further stated to answer Commissioner Steinberg's question the space has always been vacant.

COMMISSIONER STEINBERG inquired if there would be additional parking needs based on their use compared to the prior use. Ms. Betencourt stated there was a parking study done and the parking needs for the fitness center would be less than what normal commercial would require.

COMMISSIONER OSTERMAN MOVED TO FORWARD CASE 1-UP-2003 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL INDICATING IT DOES MEET ALL OF THE USE PERMIT CRITERIA. SECOND BY COMMISSIONER STEINBERG.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

APPROVED

REGULAR AGENDA

11-AB-2002 (Pueblo PoQuito Abandonment) request by Earl Curley & Lagarde PC, applicant, Saddle Rock Ranch LLC, owner, to abandon a certain portion of the north 10 feet public right-of-way for Mountain View Road, a 20 feet wide section of 123rd Street public right-of-way including a 46 feet radius cul-de-sac, and a 33 feet General Land Office patent roadway easement along the 123rd Street alignment. 123rd Street will change from a public to a private street.

CHAIRMAN GULINO stated several months ago they had a rash of the GLO easement cases and everyone who has been involved with this knows that there is a difference of opinion regarding legalities and whether they can abandon these. He further stated they are not here to discuss the legalities of this. This issue has been discussed with the City Attorney and City Council and they have gotten their direction. He remarked he would not stifle anyones opportunity to make their opinions known but he wants to remind them that they are here to discuss land use issues. He concluded he would appreciate that any comments regarding legality be kept short and to the point.

MR. GRANT stated staff received a letter from John Aleo who requested his comments be read into the record:

“If it is the city’s choice, I suppose that the city may revoke its’ interest in a patent easement on behalf of public use. To lead the public in thinking that the patent easement goes away or disappears along with the beneficial interest of the affected parties, creates nothing but disclosure problems for everyone concerned now and in the future. For the city to issue building permits to erect permanent structures onto patent easements also creates unnecessary disclosure problems.

There are no provision in the federal law that created these patent easements to abandon them. Therefore, it is the city and surveyors obligation to make sure that the patent easement remain on the plat of survey/site plan, and the public should be made aware of the ramifications of blocking, impeding, and interfering with patent easements. By not showing the patent easements on the plat of surveyor, property owners are not aware of them, and that’s where the problem starts.

The attorneys for the local governing body and the client/property owners should make the affected parties aware of the consequences of blocking, impeding, and interfacing with the patent easements. Not to do so is a vagrancy of their duty to disclose the ramifications to those concerned.

I am sure that you all have seen the memo dated November 1, 2002 addressed to J.D. Hayworth, US Congressman, from Pamela Baldwin, Legislative Counsel American Law Div. If not, I be happy to provide you with one.”

MR. DEELEY stated that earlier he passed out some new exhibits because the exhibits included in the packet don’t match the report. He provided a brief review of where the

exhibits did not match. He presented this case as per the project coordination packet. Staff recommends approval of the abandonment as proposed.

COMMISSIONER HEITEL stated he does not understand if the purpose is to accommodate the Jaske property owner with a problem regarding this easement issue, why are they requesting an abandonment of part of that roadway when we have a trail in there. Why are they not taking that trail easement as a condition of assisting with problems of this easement? He further stated that he has a real concern that we know there is a trail there. They know there is potential uses for that right-of-way and they are here just right on the heels of the discussion about trails and maximizing right-of-way and they are abandoning part of the trail buffer. He remarked he would encourage the commissioners to think about that portion of the request and the adverse impact it will have on perpetuating this trail process and they are providing this Jaske property owner, if they pass this, some relief to a problem that appears they have created itself.

COMMISSIONER NELSEN inquired how the Jaske property was allowed to be developed onto the GLO easement. He also inquired if it was developed in the City of Scottsdale. Mr. Deeley replied the lot is within the City of Scottsdale and there is a 33-foot roadway easement along there. He further stated the developer tried to negotiate the purchasing of the property from him over a period of time and there was a GLO roadway easement and, based on that have been advised he would be entitled to put improvement in there. He provided information on the adjacent property on the east side of 123rd Street that abandoned their GLO easement back in 1999.

Commissioner Nelsen stated this speaks to the letter written by Mr. Aleo on what happens when the city goes down this path abandoning GLO easements. This is just a problem that popped up. He further stated he would concur with Commissioner Heitel that in abandoning this we are eliminating some opportunities for appropriate trail placement in the future. Notwithstanding that as reflected in Mr. Aleo's letter GLO easements don't go away. The City may abandon their interest in it but they still exist. He provided information on a similar well-known case where a GLO easement was blocked and everything that blocked that easement was required to be torn down and removed. These are some of the issues they need to keep in mind. He further remarked first and foremost they need to leave their opportunities open for a trail. Again if 123rd becomes a private street that opens the issue for somebody to consider a private access easement right as patentees to the GLO easements because they might want access to the future trail along the CAP canal. He commented these are issues that need to be addressed before the City considers abandoning this.

LYNNE LAGARDE, 3101 N. Central Suite 100, Phoenix, AZ, stated she represents the applicant. She provided background information on this property. She further stated the purpose of this request is to abandon both the 33 feet GLO patent roadway easement, and the 20 feet and 46 feet radius cul-de-sac public right-of-way along 123rd Street alignment. The public right-of-way and a portion of the 33 feet GLO will be replaced with a private street. She discussed Mr. Jaske's concerns. She remarked they have been spending time since April or May negotiating through Mr. Jaske's Attorney to come up with a solution to the entry to the roadway that would have less impact on his home and the impact would be more toward the front and not the rear yard. She reported they have two signed letter agreements and the City facilitated this agreement between the

parties. She further reported they believe it is a fair agreement that solves a difficult issue for landowners. She provided an overview of where the trails would be located through this property. She noted her client has been more than accommodating of the public trails system.

Ms. Lagarde remarked she does not represent Mr. Jaske but felt she should let them know what his position was and what he bargained for. She further remarked she felt it would not be fair to Mr. Jaske to change the terms of the deal they all negotiated in good faith. She requested they approve this abandonment. She further remarked as they can see there is no where for the GLO easement to go part of it has been abandoned and the rest is being abandoned by the only one who would have a private right to enforce.

CHAIRMAN GULINO inquired since this application includes part of the abandonment on Mr. Jaske's property is he part of the application. Ms. Lagarde replied in the affirmative. Chairman Gulino stated he is just not present. Ms. Lagarde replied that is correct but he signed to authorize the application, which is required by the City.

COMMISSIONER NELSEN inquired what private right to the GLO easement is Ms. Lagarde speaking of. Ms. Lagarde replied her point is that if there is any private right in the GLO easement there is not one to assert it.

Commissioner Nelsen inquired why Ms. Lagarde's client was not exercising their right to use the 33-foot GLO patent easement on Mr. Jaske's property. Ms. Lagarde stated they did and that is how they got their plat approved. Commissioner Nelsen inquired so what is the problem in using that because don't they have the legal right to use it. Ms. Lagarde stated they absolutely did they could have developed it exactly as it was approved but they were asked by Mr. Jaske and the city to re-plat which was at a great expense to her client in order to have less impact on the lot. Commissioner Nelsen inquired just out of goodwill you did this. Ms. Lagarde replied they think it improved the subdivision as well as having less impact to Mr. Jaske's lot. They thought it was a better arrangement from a land use perspective to have a gated entry up here and both parties would benefit. Commissioner Nelsen stated it may be a better plan but the access rights to the patent easements go with the land not the property owner. Ms. Lagarde replied they understand that.

COMMISSIONER STEINBERG inquired what they would be doing with the re-configured entry off of Mountain View. Ms. Lagarde replied there would not be landscaping in the cul-de-sac but there is landscaping on either side of the wall. The walls would be low. Ron Burke, 16140 E. Jomax, provided information on the landscaping in the Cul-de-sac Island.

COMMISSIONER HEITEL stated it appears Mr. Burke has done an extraordinarily generous move in putting this project off a year or two to accommodate Mr. Jaske. In an effort to assist Mr. Jaske, he is not willing to dedicate a public trail. He further stated the Commission has a responsibility to the community at large to ensure the trail systems are propagated in a proper manner. He remarked he appreciates Ms. Lagarde's statement that it was not appropriate to go back on a deal that was structured between the parties. It seems strange because what purpose would the Commission have if they can just go to staff and structure their deals and the Commission is just suppose to

rubber stamp them. He reported he felt it was not in the public's interest to abandon the 10 feet of right-of-way that is needed for a trail system because a trail is there. He further reported he would hope his fellow commissioners would agree with him. Ms. Lagarde stated she would agree that it is in the Commission's discretion to do what is in the best interest of the community. On the other hand, she must represent the bargain they made with Mr. Jaske.

COMMISSIONER OSTERMAN inquired if the 10-foot trail easement on the west side of the Jaske property is part of the recognized trail system plan. Mr. Deeley replied in the affirmative.

COMMISSIONER NELSEN stated he does not understand why it is necessary to abandon the GLO easement on Mr. Jaske's property. Ms. Lagarde replied the reason it is necessary is because they can't put a private street within an GLO easement. Commissioner Nelsen expressed his concern that Mr. Jaske is not willing to dedicate a portion of the easement back for a trail. Chairman Gulino stated let's not confuse the fact that the trail and the GLO easement are in two different locations. Commissioner Nelsen stated they are in different locations because that is part of the agreement but the trail could be in the 33-foot easement. Ms. Lagarde stated it has been abandoned to the north of the Jaske property. It does not exist to the north of the Jaske property. Commissioner Nelsen stated the access rights go with the land so he is under the belief that the access rights to that GLO easement goes all the way up to the canal. The only people that have abandoned their rights are the City of Scottsdale. Ms. Lagarde replied that is his opinion and she does not share that opinion as to the existence of private access rights once the community has abandoned a GLO easement as public dedication. Commissioner Nelsen replied it is Federal Law but we are not here to discuss that they are here to discuss land use and there are still some unanswered questions.

MR. GRANT provided background information on this case. He stated this request came up because of a dispute between two property owners and the city got involved because it seemed to be a preferable solution to having two people feuding over a grading operation that was on one person's property. They determined it would be preferable to work out a solution that would be mutually satisfactory to both parties. Clearly, there are some questions about whether that was necessary from a legal standpoint to be done but from the standpoint of meeting two property owners' needs they have succeeded. The issue regarding the 10-foot on Mountain View whether that is a requisite part of the remainder of this request could be discussed and they could proceed without that being a portion of the application.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

LEON SPIRO, 7814 E. Oberlin Way, showed the document of the Federal Land Patent for his property. He inquired if the City Attorney had been asked for his opinion regarding what has been going on between these parties and staff. Mr. Spiro asked a series of questions regarding the reason for this request to abandon the GLO easement. He requested to see a copy of the roadway abandonment document. He inquired how the public would gain access to the trails. He also inquired why the patent easement was not shown on the site plan or plat of survey. Does the City plan on issuing building

permits to the applicant to develop structures on these patent easements. The Federal land patent that was issued by the Federal Government on each parcel sale in this area states this patent easement is subject to right-of-way not exceeding 33 feet in width for roadway and public utility purposes. He inquired if Mr. Pete Deeley has ever held the position of Engineering Service Director during the years he has worked for the City of Scottsdale. He stated he wants to know how people will get to the canal for recreation purposes. He concluded that they need to avoid this abandonment request.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

MR. DEELEY provided the Commission and Mr. Spiro with a copy of the abandonment resolution for the 1999 case for the portion north of this.

COMMISSIONER NELSEN stated Mr. Spiro asked whether Mr. Deeley has held the position of Engineering Director for the City of Scottsdale and he felt Mr. Spiro deserves an answer. Chairman Gulino stated that is not relevant to this case.

VICE CHAIRMAN LOTZAR stated he is supportive of this case as presented. He further stated many times they are disappointed that the neighbors have not worked together and this is a situation where the neighbors have worked together. The developer has worked with the neighbor at some expense at least by delaying the project and carrying the debt if any on his project and the like. Given that he felt this is a good solution. He remarked he felt it was not appropriate for them to start to re-trade the trail issue. He further remarked that he felt some level of comfort given what was demonstrated as far as access on a trail. Although it is not the same trail that one would be interested in this case, but one that gets one to the canal, and provides access to whatever recreation results from the canal.

COMMISSIONER HEITEL commented he is troubled by the fact that Mr. Jaske is unwilling to abandon the 10 feet that is planned as part of the trails system. He stated he would like to recognize the applicant and staff for trying to work out this difficult neighborhood problem and coming up with a solution to that problem. He further stated he would be able to support that portion of this request but he would not be able to support the abandonment of the 10-foot right-of-way along Mountain View Road.

COMMISSIONER OSTERMAN stated he would support the abandonment. He further stated he is also troubled by the refusal of the property owner to cooperate with the city and abandon the 10-foot trail easement that was actually planned as part of the trails system. He noted he wants to put that aside and see that as a separate issue. He further noted he would still support this abandonment. It is appropriate and a good cooperative effort between the two property owners. He concluded he felt it works best for this situation.

COMMISSIONER STEINBERG stated he would agree with his colleagues that the parties have worked hard to mitigate the situation but he is also troubled by the abandonment of the trail. He further stated he hates to see trails disappear.

COMMISSIONER HENRY stated she would concur.

APPROVED

COMMISSIONER NELSEN stated he would also concur with the effort put forth by the two property owners to bring forward a compatible plan but he cannot support this abandonment because of the loss of access and loss of future opportunity. He further stated there was a comment made about his opinion about GLO patent easements and he would like to address that. He remarked It is not his opinion it is also the opinion of the County Board of Supervisors, Maricopa County Arizona. It is opinion of the legislative counsel for the congress of the United States and his personal attorney and he is a GLO patentee. He noted he has had personal experience where he has been effected after he went through the process of abandoning an easement in the City of Scottsdale and he still has to provide access to his neighbors.

CHAIRMAN GULINO stated he does not have an objection to the abandonment on 123rd Street. He further stated he does have a problem with the abandonment of the 10 feet and he cannot support it without some provision being made for the trail. It is in the General Plan. It is unfortunate that this was not part of the discussion with the property owner early on. He remarked he would propose to whoever makes the motion that they pass this case on with a recommendation for approval with the added stipulation that we obtain the trail easement along Mountain View.

COMMISSIONER HEITEL MOVED TO FORWARD CASE 11-AB-2002 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL FOR THE ABANDONMENT OF A THE 20 FEET WIDE SECTION OF 123RD STREET PUBLIC RIGHT-OF-WAY REVOKING THE CITY'S INTEREST IN THE GLO PATENT ROADWAY EASEMENT ALONG 123RD AND CONVERTING THE 10 FOOT PUBLIC RIGHT-OF-WAY TO A 10 FOOT TRAIL EASEMENT. SECOND BY COMMISSIONER OSTERMAN.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO TWO (2) WITH COMMISSIONER NELSEN AND COMMISSIONER STEINBERG DISSENTING.

7-ZN-2002#2 (Hotel Valley Ho) request by City of Scottsdale, applicant, MSR Properties LLC, owner, for approval of amended development standards for building height, front yard parking setback and frontage open space for the Hotel Valley Ho (8.86 +/- acre parcel) located at 6850 E Main Street with Highway Commercial, Historic Property (C-3 HP) zoning.

MS. ABELE presented this case as per the project coordination packet. Staff recommends the Planning Commission approval of this proposed amended development standards in case 7-ZN-2002#2 for the Hotel Valley Ho, as authorized by Section 6.119. Historic Preservation Plan, as an appropriate tool to achieve the historic preservation and planning objectives for this property of exceptional significance, subject to the attached stipulations.

CHAIRMAN GULINO stated he was under the impression that at some point the DR Board would review the amended standards. Ms Abele reported the Planning Commission approves the amended standards and then it would go through the DR process. She further reported it would be a joint review process with the DR Board and Historic Preservation Commission.

Chairman Gulino inquired why the City is the applicant. Ms. Abele stated because the city is required to prepare the Historic Preservation Plan.

SCOTT LYON, Westroc Properties, stated they represent the owners of the hotel. He reported the team they have assembled specializes in the rehabilitation of hotels. He further reported they are very excited about rehabilitating the Hotel Valley Ho. He noted the property is unique because of its history, architecture and low-density nature in an urban environment. He further noted it is important to realize the challenges associated with rehabilitation. First and foremost rehabs are expensive it is much easier to develop from scratch. He remarked Westroc has taken a leap of faith by supporting the historic overlay with the corresponding restrictions on the property without a clear understanding at that time of the trade off. He further remarked they have processed their plans through both the City and State Historic Preservation Offices. He stated he would like to thank city staff for all of their support and assistance through this very complex process.

KEN ALLEN, Allen and Philip Architects, reviewed the plans for the hotel. He provided an overview of the three development standards. He discussed the rationale for requesting the three development standards. He reported the proposed amended standards for open space and parking setback will allow for the retention of the existing open space and parking locations to conform with and retain the prominent characteristics of the historic site plan.

Mr. Allen stated the proposed additional height in this central location is consistent with the original, documented 1956 architectural and structural engineering plans for four additional floors of guest rooms on top of the two-story lobby. This allows them a unique opportunity to finish the building.

Mr. Allen stated the amended development standards are needed to make this project economically viable.

VICE CHAIRMAN LOTZAR requested information on phase 2. Mr. Allen presented information on the two buildings that have been identified for phase 2. He noted they have not determined if they will be residential or some other kind of ownership. Vice Chairman Lotzar inquired if the building height would change. Mr. Allen replied they do not intend to change the building height.

COMMISSIONER STEINBERG inquired if the off site parking has HP designation. Mr. Allen replied the HP designation is only the north side. Commissioner Steinberg inquired if they have plans that the south side would have the historic character that resembles the original plans for the Valley Ho. Mr. Allen replied in the affirmative.

Commissioner Steinberg inquired if the city economic incentives have been earmarked for the project yet. Mr. Abele replied as part of the HP plan it addressed financial incentives. She provided information on the financial incentives that are available.

Commissioner Steinberg asked about the materials that would be used on the tower element. Mr. Allen provided an overview of the materials that would be used on the tower.

Commissioner Steinberg stated he loves the project and would support the request.

COMMISSIONER HEITEL stated he supports the project. He inquired if they were using any transitional parking to blend into the off site parking. Mr. Allen replied there is a pending DR case for the south portion so that issue will be addressed at that time.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

CATHY JOHNSON, 8655 E. Diamond, spoke in support of this request. She stated she is chair of the Historic Preservation Commission. She further stated last month the Historic Preservation Commission unanimously voted to approve amended development standards and they felt the proposed changes were necessary. She remarked this will improve the downtown area and help to keep the downtown area active.

(CHAIRMAN GULINO CLOSED PUBLIC TESTIMONY.)

COMMISSIONER HENRY stated she toured the site today. She further stated that Mr. Lyon took her through the building and showed her a lot of the things that were spoken of tonight regarding what the Ramada had done how they put dry wall over the original wall. She remarked you hear of how master paintings are discovered because somebody used a beautiful master painting and painted over and underneath is this wonderful original and that is what is at the Valley Ho and the owners are going to take it back to the original. She further remarked she is very enthused about this project and felt it will be a wonderful addition to the downtown.

Commissioner Henry stated the problem they have with society today is that we are a tear down, throw away society and we have done that to so many of the wonderful buildings in Scottsdale. Here we have an owner who is taking something that was build and preserving it, improving it and bringing it back to how it was originally so she will support this project.

COMMISSIONER STEINBERG stated he would like to congratulate them on the quality team they have put together for this project.

COMMISSIONER STEINBERG MOVED TO FORWARD CASE 7-ZN-2002#2 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL. SECOND BY COMMISSIONER HENRY.

THE MOTION PASSED BY A VOTE OF SEVEN (7) TO ZERO (0).

(Commissioner Osterman left the meeting at 6:55 PM)

11-TA-2000#2 (Text Amendment/ESLO II) request by City of Scottsdale, applicant, to amend Ordinance 455 (Zoning Ordinance) Article III. Definitions.; Section 3.100., General.; Article VI. Supplementary Districts.; Section 6.1010. Environmentally Sensitive Lands Ordinance (ESLO).; Section 6.1011. Purpose.; Section 6.1020. Applicability of Regulations.; Section 6.1021. Applicable Districts and Conditions.; Section 6.1050. Intensity of Development.; Section 6.1060. Open Space Requirements.; Section 6.1070. Design Standards.; Section 6.1071. Design Guidelines.; Section 6.1083. Amended

Development Standards.; Section 6.1090. ESL Submittal Requirements.; Section 6.1091. All Applications.; Section 6.1110. Appeals. This covers approximately 134 square miles of desert and mountain areas of Scottsdale and is located north and east of the Central Arizona Project (CAP) Canal.

MR. WARD presented this case as per the project coordination packet. Staff recommends approval, subject to the attached stipulations.

COMMISSIONER NELSEN inquired why churches had exemptions for height in the R1 districts. Mr. Ward stated it is difficult to build an adequate church facility at the 26-foot height. Commissioner Nelsen stated in his neighborhood people are building single-family residences and calling them churches. He further stated his issue is that this would allow those facilities to go up to 45 feet right in the middle of a residential neighborhood. He remarked it seems there needs to be some distinction if they are going to have an exemption for churches as to what constitutes a church and where 45 feet would be appropriate.

MR. GRANT stated to clarify they are not suggesting that they are changing this to reflect the church provision they are not creating a new provision with this. They are saying this is how they have interpreted this based on the ordinance and this is how churches are being regulated. They are not suggesting they enact any further level of restriction with this ordinance this is a reflection of how the ordinance is being reflected today. Commissioner Nelsen stated his point is that there should be further level of distinction when they give exemptions to churches in the ESL when the private property owner does not get those exemptions so there is a level playing field. Mr. Grant stated churches would not be exempt from going through the DR process. Churches as opposed to single family residents have to go through DR so there is a specific criteria they have to meet that does not apply to residential structures. Commissioner Nelsen stated he was speaking about the height restrictions. He further stated in executive session when he was sitting on DR Board there was a discussion regarding what they can and can't do before it would be considered infringing on someone's religious rights. Ms. Boomsma reminded Commissioner Nelsen he cannot share what he learned in executive session in a public meeting. Commissioner Nelsen stated he is not sharing anything but just bringing into the discussion that it is unclear where the line is crossed. If they are going to have a environmentally sensitive lands ordinance it needs to address those issues specific to those lands and not grant any exemptions but have a vehicle by which exemptions could go through the process. This is a blanket statement for churches.

COMMISSIONER HENRY inquired if the this language would be incorporated into the Desert Foothills Overlay or would this take precedence. Mr. Stabley stated if the Desert Foothills Overlay were to be adopted by City Council that would take precedence over the ESLO in the areas that the rules were in conflict.

COMMISSIONER HEITEL inquired if what they were saying is that in the underlying zones that there is a specific designation that churches can build in the underlying zone at 30 feet so effectively taking ESLO and going back to the underlying zone. The 30 feet plus the 15 feet for 10 percent of the roof. Mr. Ward replied in the affirmative. Commissioner Heitel inquired if as it stands right now ESLO 2 regulates all buildings to

26 feet unless through the DR Board. Mr. Grant stated their interpretation that 26 feet is the height in R1 districts but because churches are regulated elsewhere in the ordinance, that direction takes precedence. They have included this as clarification of their interpretation.

Commissioner Heitel inquired if the ordinance could be legitimately interpreted differently than staff is currently interpreting it.

VICE CHAIRMAN LOTZAR stated they are asking a number of legal questions that are all legitimate but they are not going to get any meaningful result through that process so the Commission might want to consider passing this request with every other issue going forward and come back to this issue.

CHAIRMAN GULINO stated Commissioner Nelssen makes a good point regarding people may decide to turn their home into a church and go up to 45 feet as a way of getting around the ordinance. Mr. Grant reiterated the fact that single-family homes can be used as churches but they are subject to the DR approval and are subject to different criteria.

MS. BOOMSMA presented information on the issue of rights of the religious lands use noting that it is a very complicated. She stated part of the interest in having this clarification is to regularize the way the ordinance is seen by the public and to help staff in apply it in particular cases.

COMMISSIONER NELSEN stated he spent a lot of time working on ESLO and 24 feet was the height that was discussed for all buildings in ESLO and it was raised to 26 feet. Then this question came up about churches and he does not see any need to pull this issue out because it is a pretty simple issue and should be dealt with tonight.

Commissioner Nelssen stated another issue is that people may want to build a 45-foot tall tower because a wireless facility will pay them \$2,500 a month.

Commissioner Nelssen stated under Hazard-related Criteria to consider in the Hillside district it states they may consider natural hazards including erosion, subsidence, boulder rolling, rock falls, flooding, flood related mud slides. He inquired if there was any reason why it was only specific in the hillside area. Mr. Ward stated he believes it was an oversight or assumed it was covered. This has to do with areas the DRB can look under on hillside landforms.

Commissioner Nelssen stated drainage is a very important element of this ordinance as it relates to flooding and he would like to see it addressed throughout the entire ordinance because it gets to community health and safety issues. Mr. Grant stated when the ESLO went through a year ago there was a conscious effort to look at the purpose of the ordinance and tie that purpose back to health and safety and welfare issues. One of the things that were confusing between the ESL ordinance and the drainage ordinance was that they measured flow differently. One of the things they took care to do in the last iteration of the ordinance was to refer to the drainage ordinance in the ESL so there was a strong tie between drainage and the health, safety and welfare issues and make sure there was not confusion between the two ordinance. Commissioner Nelssen stated

those drainage issues need to be referenced in the purpose for ESLO. The purpose statement mentions drainage issues and health and safety but it does not emphasize how important that issue is to ESL areas and how important it is to defending the ordinance. One of the major premises of the ordinance should be to maintain the natural drainage and run off in ESL areas.

COMMISSIONER HENRY stated she would like to be clear about the church situation. She inquired if under this interpretation if churches that go into this area would be required to get a variance. Mr. Grant replied in the negative. Under this interpretation, they would be subject to the church criteria. Commissioner Henry noted that staff has been working under this interpretation so precedence has already been set. Mr. Grant replied precedence from the standpoint of their interpretation.

(CHAIRMAN GULINO OPENED PUBLIC TESTIMONY.)

HOWARD MEYERS, 6631 E. Horned Owl Trail, stated he does not have any problems with all of the changes except the church issue and it has been a problem for a long time. He further stated other communities regulate churches and force them to go through the permit process. There should be a way to regulate it so they don't have all of the problems Commissioner Nelssen referred to.

Mr. Meyers stated his other problem is that when this came through the last time they knew there were things that were not right but they passed it anyway because there were some good changes they wanted to get through. Now there are things that are not working in ESLO specifically around drainage. He further stated he felt the NAOS should be tied to the drainage.

Mr. Meyers showed pictures of washes where structures have been placed on washes blocking them. He stated ESLO is not making this situation better. He presented information on the drainage problems that are occurring in this area.

Mr. Meyers remarked churches should be regulated just the same as everyone else.

COMMISSIONER HEITEL inquired if the pictures Mr. Meyers showed were done under the current drainage ordinance. Mr. Meyers replied in the affirmative. Commissioner Heitel inquired how Mr. Meyers would fix the drainage issues. Mr. Meyers stated they should make a wash one of the major features. He further stated they should tie the drainage to the NAOS.

Mr. Meyers stated he felt the Commission should pass this ordinance minus the church issues.

COMMISSIONER HEITEL inquired if they could indicate some direction to go and pass this and request staff to tighten it up before it got to Council in a more definitive form. Mr. Grant stated he felt many of the issues that have been discussed tonight are important issues but if they do open this up in the community they would have a multitude of issues. Some people are in favor of perimeter walls some people opposed. Some people are in favor of channeling for drainage some people opposed. Some people in favor of additional NAOS requirements so people oppose. He remarked he

does not know if it is a clear-cut answer that they can fix these things and pass it on to Council. He remarked he felt it is a matter of should they take this back to the community for discussion.

COMMISSIONER NELSEN stated he does not think this needs to go back to the community because there has been a lot of public input. This gets down to what is the right thing to do. He further stated there is enough historic information regarding the 100-year flood. He commented the issues can be addressed regarding what is current policy under ESLO but they are not going to make the decision here but this discussion will continue at the Council level.

Commissioner Nelsen requested some help from staff in crafting a motion that would be brief and to the point that would communicate that they want this request to move on to City Council for approval but they want to suggest that there should not be exemptions for churches in terms of height and lighting. The difficult part would be to craft some language that would express their concerns regarding the drainage issues in ESLO.

VICE CHAIRMAN LOTZAR stated they should take into consideration the open meeting laws requirements of notice and posting and take a read of what he considers a fairly detailed agenda item.

MS. BOOMSMA stated that was her point that they do have some notice issues and public input issues. If the Commission would like to make a motion that made some simple changes about the churches they have discussed previously and wanted to include language in the purpose section that said the importance of drainage to the whole concept of ESLO that would be fine. It would be more difficult to try and come up with some specific language. She further stated she would recommend that the motion would limit it self to more general concepts that are covered in the existing notice and not more detailed changes dealing with tying NAOS to drainage requirements.

CHAIRMAN GULINO stated his recommendation would be that they speak to the issue before them regarding the changes to the proposed draft relative to concerns the Commission felt that there are issues relative to compatibility of ESLO Ordinance and the flood plain ordinance. He further stated he would direct staff to have the Flood Plain Administrator look at some of these issues and the issues could be discussed at a study session. He remarked that in his own involvement over the years he has always had a concern regarding the compatibility between those two ordinances. He further remarked he is not convinced the drainage problems are as severe as Mr. Meyers has indicated although they do have problems. He added he thought the most efficient and productive way to pursue this issue is to allow drainage staff to address in this detail.

COMMISSIONER HEITEL inquired if it would be over stepping their bound to insert some provision that directed that solid wall fencing could not occupy in minor or major washes because they believe washes are important characters of ESLO. Make a strong recommendation to Council that we request staff to look at this entire ESLO drainage issue. Chairman Gulino stated the Commission has the power to request staff to bring back further analysis.

VICE CHAIRMAN LOTZAR stated they had one person come and talk to them from this area so that tells him they should move this on rather than trying to make it perfect. He further stated they should move this forward minus the church issue.

COMMISSIONER NELSEN stated there have been more than one person come forward on the drainage issues. He further stated he has concern about getting this back to the city drainage engineers because drainage issues have been left as solve as you go.

COMMISSIONER NELSEN MOVED TO FORWARD CASE 11-TA-2000#2 TO THE CITY COUNCIL WITH A RECOMMENDATION FOR APPROVAL WITH THE FOLLOWING CHANGE:

ON PAGE 17 THAT READS: "CHURCHES AND PLACES OF WORSHIP ARE SUBJECT TO THE CHURCH AND PLACES OF WORSHIP CRITERIA FOR BUILDING HEIGHTS ESTABLISHED BY THE UNDERLYING ZONING DISTRICT". THAT SHOULD BE CHANGED TO: ALL R1 ZONING SHOULD BE TREATED THE SAME. THERE SHOULD BE NO EXEMPTIONS FOR CHURCH BUILDING HEIGHTS.

COMMISSIONER STEINBERG inquired if Commissioner Nelsen would agree to a conditional use permit requirement for places of worship. Commissioner Nelsen stated he would support that but that is not on the agenda.

WITH THE STRONG RECOMMENDATION THAT CITY COUNCIL WOULD DIRECT STAFF TO REVISIT THIS RELATIVE TO DRAINAGE PROBLEMS REGARDING BLOCKING WASHES.

SECOND BY COMMISSION HEITEL.

COMMISSIONER HEITEL requested the Flood Plain Administrator address these issues at a study session.

MR. GRANT stated just for clarification on page 17, how did Commissioner Nelsen want that worded. Commissioner Nelsen stated churches and places of worship are subject to the same criteria as residential building standards or however they want to put that. Chairman Gulino stated there should be no special permit or special provision for height. Commissioner Nelsen stated he would add if they want to go through the variance process for a special purpose they feel strongly about that there is a venue they can appear before and gain approval.

VICE CHAIRMAN LOTZAR stated he would love to vote in favor of this case but he is afraid of the unintended consequences on the church issue. He further stated he is for everything but the church issue and that is why he wanted to put it aside.

CHAIRMAN GULINO stated he does not agree with the restrictions placed on the church but he will vote in favor to move this on to City Council with a note that they take another look at the church requirement and give special consideration to churches.

THE MOTION PASSED BY A VOTE OF FIVE (5) TO ONE (1) WITH VICE CHAIRMAN LOTZAR DISSENTING.

CHAIRMAN GULINO thanked Vice Chairman Lotzar for his outstanding service on the Planning Commission.

WRITTEN COMMUNICATION

There was no written communication.

ADJOURNMENT

With no further business to discuss, the regular meeting of the Scottsdale Planning Commission was adjourned at 8:22 p.m.

Respectfully Submitted,

"For the Record " Court Reporters

APPROVED